Filed 4/24/15 In re J.A. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.A., a Person Coming Under the Juvenile Court Law.	B258921 (Los Angeles County Super. Ct. No. CK67824)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Richard D. Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mark J. Saldino, County Counsel, Dawyn R. Harrison, Assistant County Counsel and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

C.G. (mother) appeals following the dispositional hearing in the dependency case of her two-year-old son, J.A. She contends that the court erred in denying her reunification services. Mother admits that she had a long-standing, unaddressed drug problem and that she failed to reunify with her four older children. She therefore concedes that the court could deny her reunification services under Welfare and Institutions Code section 361.5, subdivision (b)(10), (11), and (13).[1] However, mother argues that reunification was in J.A.'s best interest and the court accordingly erred in failing to grant her reunification services under section 361.5, subdivision (c). We affirm.

FACTUAL AND PROCEDURAL HISTORY

I. Prior Proceedings

Mother has a history with the Los Angeles County Department of Children and Family Services (DCFS) relating to her four older children (J.A.'s half siblings).[2] Mother failed to reunify with all four.

In 2007, the juvenile court sustained a petition pursuant to section 300, subdivisions (b), (d), and (g), pertaining to J.A.'s half siblings Elizabeth, Ruben, and L. The petition alleged that mother had a history of substance abuse and was a current user of amphetamine and methamphetamine. She tested positive for methamphetamine on February 6, 2007 and April 17, 2007. Mother failed to comply with her voluntary case plan and fled with Ruben when DCFS attempted to detain him. Ultimately, Elizabeth, Ruben, and L. received permanent placement services as a result of mother's substance abuse. L. was adopted by paternal relatives. Neither Elizabeth nor Ruben was adopted, but mother never reunified with them.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

[2] We provide only a general overview of mother's history with DCFS, which is more extensive than detailed here.

In 2009, the juvenile court sustained counts under section 300, subdivision (b), regarding J.A.'s fourth half sibling, Rebecca. The petition alleged that mother used amphetamine and methamphetamine during her pregnancy with Rebecca. The petition also alleged that both mother and Rebecca tested positive for amphetamine at the time of Rebecca's birth. Rebecca was adopted in 2010.

In addition to her juvenile court history, in 2005, mother was convicted of misdemeanor possession of a controlled substance and placed on probation. In 2006, mother's probation was terminated, and she was sentenced to 180 days in jail.[3]

II. Current Proceeding

A. July 2, 2014 Detention Report, Petition, and Initial Detention Hearing

According to DCFS's July 2, 2014 detention report, the Los Angeles Sheriff's Department notified DCFS about a May 10, 2014 altercation between mother and J.A.'s father (father) involving two-year-old J.A. A DCFS social worker interviewed mother about the altercation. Mother stated that she and father were arguing over father's desire to visit a friend. Father became very upset when she refused to go with him, and he threw his car keys at her. The keys hit mother's arm and caused redness. Mother responded by throwing the bowl of soup she was feeding J.A. at father. Father grew even more upset, picked up the keys, and again threw them at mother. The keys hit mother in the back, causing redness, swelling, and pain. J.A.'s godfather, who was present, told father to stop and go for a walk. Father then grabbed J.A. and drove around the block in circles with him. Eventually, father parked in front of the family's apartment. Mother contacted law enforcement because she was worried about J.A.'s well-being. Once law enforcement arrived, they arrested father and provided mother with an emergency restraining order against father. Mother claimed that she was attempting to obtain a permanent restraining order against him.

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[3] In 2004, mother was convicted of passing a fictitious check. In 2008, she was convicted of misdemeanor theft and placed on probation. The record does not indicate whether these convictions were drug-related.

Mother stated that father recently had been acting strange and was easily upset. She suspected he was using methamphetamine. Mother stated that she had no plans to reconcile with him.

Mother admitted that she failed to reunify with her four older children. She further admitted that she had a long history of substance abuse, but she claimed she currently did not use drugs. Mother stated that she had learned her lesson and would not expose J.A. to abuse. She agreed to take an on-demand drug test on May 24, 2014, the day after her interview with the social worker. She tested positive for amphetamine and methamphetamine.

On June 27, 2014, DCFS removed J.A. from mother's custody. At mother's request, DCFS placed J.A. with his adult half sibling, Elizabeth, and her partner.

On July 2, 2014, DCFS filed a dependency petition regarding J.A pursuant to section 300, subdivisions (a) and (b). The petition alleged that mother and father had a history of domestic violence and engaged in violent altercations in J.A.'s presence. The petition described the May 10, 2014 altercation and father's arrest for domestic violence against mother. The petition also alleged that father recently had choked mother, pushed mother, and smashed the windshield of mother's car.

The petition further alleged that mother had a history of substance abuse and was a current abuser. She tested positive for amphetamine and methamphetamine on May 24, 2014, when J.A. was in her care. The petition alleged that previously a court had ordered mother to participate in a substance abuse rehabilitation program. It also alleged that mother's four older children had received permanent placement services due to mother's substance abuse. Finally, the petition warned that DCFS might seek an order pursuant to section 361.5 that no reunification services be provided.

On July 2, 2014, the court conducted an initial detention hearing. Mother appeared at the hearing. Father did not appear, but the court found that he was J.A.'s presumed father. The court ordered weekly drug testing for the parents and an inpatient drug treatment program for mother. The court ordered J.A. detained with Elizabeth. The

court granted mother monitored visits but denied father visits due to mother's restraining order against him.

B. August 12, 2014 Jurisdiction/Disposition Report and Jurisdictional Hearing

In its August 12, 2014 jurisdiction/disposition report, DCFS reported that J.A. appeared healthy and was well-cared for in Elizabeth's home. In an August 6, 2014 interview, Elizabeth reported that J.A. was adjusting, sleeping, and eating well. She stated that mother had not requested a visit with J.A. or called to see how he was doing. Elizabeth expressed concerns about both mother's and father's ability to care for J.A. due to their drug use. Elizabeth stated that she would adopt J.A. if he was not reunified with his parents.

On August 4, 2014, a social worker interviewed mother. Mother reported that she currently was homeless and staying with friends at night. Although the social worker offered to meet mother at a McDonald's, mother preferred a telephone interview. Mother reported that she had not had contact with father since the May 10, 2014 altercation. Mother explained that she noticed a change in father in March 2014 and believed he was using methamphetamine. Father had grown irritable and aggressive toward her. Mother stated that, besides the May altercation, father also had choked her and broken the windshield of her car. Mother again admitted to her history of drug use and acknowledged that her drug use contributed to her failure to reunify with her four older children. She further admitted to relapsing shortly after J.A.'s birth. Mother reported that she had never complied with a substance abuse program.

According to the social worker, mother indicated that she was not ready to address her substance abuse. The social worker reported that mother stated, "I am not ready to let go of drugs now. I am not stable. I want [J.A.] to be adopted by my daughter Elizabeth. I am not stable and I tried but I just can't provide [J.A.] with a good home. . . . I am not going to commit to that (sobriety). It is just something that I can't and don't want to do right now."

DCFS located father on August 6, 2014. Father reported that he was renting a room from a family friend. He pled guilty to the domestic violence charge and was released from jail on May 20, 2014. The criminal court ordered him to complete a 52-week anger management program and placed him on three years of summary probation. Father admitted to throwing his keys at mother during the May 10, 2014 incident. He also admitted to breaking the windshield of mother's car. However, he stated that he had never hurt mother or laid hands on her. Father further admitted that he and mother used methamphetamine together. He reported that he had not used in approximately two months, but admitted that he had never addressed his drug problem or completed a drug program. Father indicated that he wanted to reunify with J.A. and would comply with DCFS and court orders. He stated, "I will do what it takes to get my son back."

In its jurisdiction/disposition report, DCFS recommended that the petition be sustained. DCFS further recommended that father receive six months of family reunification services and that mother be denied family reunification services pursuant to section 361.5.

At the August 12, 2014 jurisdictional hearing, father appeared and was appointed counsel. Mother was also present. The court sustained the section 300 petition, granted father monitored visits, and set a contested dispositional hearing for September 15, 2014.

C. September 15, 2014 Disposition Report and Dispositional Hearing

In its September 15, 2014 disposition report, DCFS reported that mother desired to have an opportunity to reunify with J.A. DCFS also reported that mother had monitored visits with J.A. on August 29 and September 5, 2014. A social worker reported that J.A. ran to mother when he saw her, and mother behaved appropriately with him during a third visit on September 8, 2014. However, DCFS reported that J.A. appeared happy, healthy, and comfortable with Elizabeth and that he did not cry when he left the meeting with mother.

At a team decision meeting on September 5, 2014, mother admitted that she continued to use about $20 worth of methamphetamine per week. She informed DCFS that she was on a waiting list for an inpatient recovery program. Mother later submitted

documentation to the court indicating that she enrolled in the program on September 11, 2014.

DCFS again recommended that father receive six months of family reunification services and that mother be denied family reunification services pursuant to section 361.5.

The court held a contested dispositional hearing on September 15, 2014. Mother was present with counsel. The court entered into evidence the August 12, 2014 jurisdiction/disposition report, the September 15, 2014 disposition report, and a letter documenting mother's enrollment in the inpatient recovery program. All counsel stipulated that if called as a witness, mother would testify as follows: "number one, she very much wants to have family reunification services despite what was said in the detention [sic] report. [¶] She says that I did not say that. I do want reunification services and that was clarified. [¶] Number two, that she has now entered the home and intends on completing the services that are provided in there. [¶] Number three, she has a very close relationship with her child, and it would be very beneficial for the court to extend family reunification services for her with respect to the child [J.A.] [¶] And number [four], presently, she is clean and sober. . . . Already attending meetings, 12-step meetings."

Mother's counsel asked the court to grant mother reunification services. He stated that mother already had shown a desire and willingness to get her problems under control. Mother quickly enrolled in an inpatient recovery program, is active and involved in it, and intends to complete it. Mother's counsel noted that the court was required to order reunification services for father, even though he had minimal contact with J.A. He argued it would be impractical to deny services to mother when father will be receiving services for six months. Mother's counsel also argued that mother and J.A. were bonded, as illustrated when J.A. ran into mother's arms during the September 8, 2014 visit. Mother's counsel contended that mother was "highly likely" to reunify with J.A. within six months.

J.A.'s counsel stated that she had no objection to granting mother reunification services. However, counsel noted that mother had just entered the program and that mother recently admitted she still was using.

The court found by clear and convincing evidence that returning J.A. to his parents would create a substantial risk of detriment and substantial danger to him. The court ordered family reunification services for father.

Before stating its decision, the court addressed mother as follows: "The fact is you had a chance to get off . . . the drugs and deal with your drug problems with the other children. You didn't do that in the reunification period . . . and you lost your parental rights of those other children . . . . That was the time that you needed to get yourself clean and sober. [¶] The law allows services if there's clear and convincing evidence that you've turned it all the way around. Starting to turn it around is not turning it all the way around. You have to complete eight programs and demonstrate a period of sobriety. That's what we needed to have today. And there's not clear, convincing evidence that you've changed. [¶] So these are children who are siblings or half siblings, and you didn't follow the court's directive in getting programs done. And you lost parental rights to the siblings and half siblings, [L.] and Rebecca. And there are no grounds for believing that extending any more services to you would change the outcome. . . . [¶] With a long history, protracted, chronic[,] intense drug addiction, this is the kind of thing needed to be dealt with a long time ago. And we urged you to do so. And you didn't—so, now we need to start moving on . . . . I have to do what is best for the child. And it does not appear, in my estimation, best for your child to continue the services for you."

The court denied mother reunification services under section 361.5, subdivision (b)(10), (11), and (13). Nonetheless, the court granted mother two two-hour visits per week. The court set a status review hearing for March 16, 2015.

Mother appealed.

DISCUSSION

I. Denial of Reunification Services under Section 361.5, Subdivision (b)

"It is difficult, if not impossible, to exaggerate the importance of reunification in the dependency system." (*In re Luke L.* (1996) 44 Cal.App.4th 670, 678.) "There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless*" the court finds by clear and convincing evidence that "the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95-96 (*Cheryl P.*).) "Section 361.5, subdivision (b) is a legislative acknowledgement 'that it may be fruitless and an unwise use of governmental resources to provide reunification services under certain circumstances.' [Citation]" (*Id.* at p. 96; *K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393.)

Here, the court denied mother reunification services under section 361.5, subdivision (b)(10), (11), and (13).[4] "Section 361.5, subdivision (b)(10) and (11), authorize the denial of services to a parent who has failed to reunify with another child or whose parental rights to another child were terminated if the court finds that the parent 'has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling. . . .'" (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.) Section 361.5, subdivision (b)(13) authorizes the denial of reunification services to a parent who "has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem" within the preceding three years or has failed to comply with a drug or alcohol treatment program described in a case plan on at least two prior occasions.

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[4] None of the section 361.5, subdivision (b) exceptions applied to father. Accordingly, the court was required to order reunification services for him under section 361.5, subdivision (a).

On appeal, mother admits that "she had a long standing drug problem that had not been previously addressed, and [that] she failed to reunify with her four other children." She therefore does not challenge the court's conclusion that section 361.5, subdivision (b)(10), (11), and (13) applied to her. Accordingly, mother concedes that the court could deny her reunification services under section 361.5, subdivision (b).

II. Refusal to Grant Reunification Services under Section 361.5, subdivision (c)

Mother contends that the court erred in failing to grant reunification services under section 361.5, subdivision (c).[5] Despite the applicability of section 361.5, subdivision (b)(10), (11), and (13), the court may provide reunification services under section 361.5, subdivision (c) "if it finds, by clear and convincing evidence, that reunification—not reunification services—is in the dependent child's best interests. [Citations.]" (*In re S.B.* (2013) 222 Cal.App.4th 612, 622.) Thus, having found that section 361.5, subdivision (b) applied, the court was prohibited from ordering reunification services unless it found, by clear and convincing evidence, that reunification was in J.A.'s best interest. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 109; *In re Ethan N.* (2004) 122 Cal.App.4th 55, 64.) "The burden is on the parent to . . . show that reunification would serve the best interests of the child." (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227; see also *In re A.G.* (2012) 207 Cal.App.4th 276, 281; *In re Lana S.*, *supra*, 207 Cal.App.4th at p. 109.)

"'The concept of a child's best interest "is an elusive guideline that belies rigid definition. Its purpose is to maximize a child's opportunity to develop into a stable, well-adjusted adult." [Citation.]' [Citation.]" (*In re William B.*, *supra*, 163 Cal.App.4th at p. 1227.) "In determining the children's best interest, the 'court should consider "a parent's current efforts and fitness as well as the parent's history", "[t]he gravity of the problem that led to the dependency"; the strength of the bonds between the child and the parent

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[5] Section 361.5, subdivision (c) states in pertinent part, "[t]he court shall not order reunification for a parent or guardian described in paragraph . . . (10), (11), [or] (13) . . . of [section 361.5,] subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c).) We note that mother incorrectly quotes section 361.5, subdivision (c) as stating that "[t]he court shall not order reunification *services* . . . ." (Emphasis added.)

and between the child and the caretaker; and "the child's need for stability and continuity."' [Citation.] '[A]t least part of the best interest analysis must be a finding that further reunification services have a likelihood of success. In other words, there must be some "reasonable basis to conclude" that reunification is possible before services are offered to a parent who need not be provided them.' [Citation.]" (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1164.)

"'A juvenile court has broad discretion when determining whether . . . reunification services would be in the best interests of the child under section 361.5, subdivision (c). [Citation.] An appellate court will reverse that determination only if the juvenile court abuses its discretion.' (*In re William B.*, *supra*, 163 Cal.App.4th at p. 1229 [].)" (*In re G.L.*, *supra*, 222 Cal.App.4th at pp. 1164-1165.) "We will not disturb the court's determination unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the juvenile court. [Citation.]"[6] (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 881.)

We conclude that the court did not abuse its discretion in finding that mother did not show by clear and convincing evidence that reunification would be in J.A.'s best interest. Mother had a long history of serious drug abuse that deeply impacted the lives of all her children. Even though she failed to reunify with four of her children due to substance abuse, mother continued to use drugs while J.A. was in her care. Just 10 days before the dispositional hearing, mother admitted that she continued to use

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[6] Mother contends that we should apply a de novo standard of review because the court applied the wrong legal standard and the facts are not disputed. We disagree. As detailed below, the court ultimately applied the correct standard. Mother also incorrectly asserts that we must review for substantial evidence if we do not review de novo. Mother would be correct if we were reviewing the court's order denying reunification services under section 361.5, subdivision (b), but we are not. (See *Cheryl P.*, *supra*, 139 Cal.App.4th at p. 97.) She challenges the court's section 361.5, subdivision (c) finding, which we review for abuse of discretion. (*Id.* at p. 96, fn. 6.)

methamphetamine. She also became homeless after DCFS removed J.A. from her custody. Thus, mother's "fitness as well as [her] history" weighed against reunification. (*In re G.L.*, *supra*, 222 Cal.App.4th at p. 1164.)

Mother did enter into an inpatient treatment program four days before the dispositional hearing, but the court found this effort to be insufficient. Mother contends that the court applied the incorrect standard because it required her to show by clear and convincing evidence that she "turned [her drug problem] all the way around" and "complete[d] eight programs and demonstrate[d] a period of sobriety." If the court's analysis had ended there, or clearly indicated its statement applied only to its section 361.5, subdivision (b) analysis we would agree.[7] However, the court's overall discussion indicates that the court appreciated that it was mother's burden under section 361.5, subdivision (c) to show that reunification was in J.A.'s best interest. Ultimately, the court did make the requisite best interest finding: "I have to do what is best for the child. And it does not appear, in my estimation, best for your child to continue the services for you."

Further, we do not interpret the court's statements as requiring mother to be cured of her addiction, as suggested by the inartful phrase "turned it all the way around." The court's subsequent comments belie these words. The court explained that mother needed to have been sober for a period and completed programs, not be cured of her addiction. We construe these statements as describing the type of "current efforts" mother needed to make for the court to conclude that reunification was in J.A.'s best interest. (*In re G.L.*, *supra*, 222 Cal.App.4th at p. 1164.) Given the gravity of mother's drug problem, her historical failure to correct it, and her recent use, the court did not abuse its discretion in requiring mother to have completed programs and demonstrated a period of sobriety.

Additionally, mother did not request a visit or even call to check on J.A. in the first 40 days after DCFS removed him from her custody. Mother only saw J.A. three times in the two-and-a-half months after his removal. While J.A. expressed affection toward mother when he saw her, he also appeared comfortable and bonded with his

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[7] As noted above, mother does not challenge the denial of reunification services under section 361.5, subdivision (b).

caretaker, Elizabeth. Thus, the "strength of the bonds" also did not favor reunification. (*In re G.L., supra*, 222 Cal.App.4th at p. 1164.) On this record, the court did not abuse its discretion in concluding that there were no grounds to believe that reunification was in J.A.'s best interest, and therefore no need to extend services under section 361.5, subdivision (c).

Mother also argues that DCFS failed to meet its obligations under section 361.5, subdivision (c)[8] by failing to report on the possibilities of mother's potential success and whether non-reunification would be detrimental to J.A. Mother has forfeited this argument by failing to raise it in the dependency court or request a continuance to permit DCFS to address the issue.[9] (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *In re Richard K.* (1994) 25 Cal.App.4th 580, 590.)

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[8] The relevant portion of section 361.5, subdivision (c) states, "the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child."

The parties do not address whether this provision of section 361.5, subdivision (c) applies when, as here, section 361.5, subdivision (b)(5) is not at issue. Accordingly, we express no opinion on the matter.

[9] Mother also contends that the social worker failed to update the court that mother had been admitted to the inpatient recovery program. The record does not indicate that DCFS knew or could have known of mother's admittance before the dispositional hearing. In fact, the admission letter mother introduced into evidence was dated September 15, 2014, the date of the dispositional hearing.

Mother further claims that the social worker erroneously reported that mother stated that she was not ready to address sobriety or participate in a treatment program. Aside from mother's self-serving stipulated testimony, the record does not indicate that the report was false. Additionally, the record does not indicate that the court relied on the social worker's statements over mother's stipulated testimony.

Finally, mother contends that reunification would be in J.A.'s best interest for four reasons: "(1) [m]other's reunification services would not have slowed down the proceedings because [f]ather was granted services, (2) granting services would have given [DCFS] access to closely monitor [m]other's progress, (3) services would encourage mother to continue her progress, (4) and [m]other's son was placed with a relative and was closely bonded to [m]other making it likely that even if parental rights were terminated, the child would benefit by [m]other maintaining her sobriety." These factors primarily focus on mother's interests and increasing her chances of reunification, not J.A.'s best interest. Even if these factors did advance some interest of J.A.'s, they do not constitute "clear and convincing evidence" that reunification is in J.A. best interest. (§ 361.5, subd. (c).)

DISPOSITION

The order of the dependency court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.